DOCUMENT RESUME

ED 190 011 HE 012 971

AUTHOR	Stein, Ronald H.: Zuckerman, Judy
TITLE	Federal Regulations and Higher Education: An Overview for College and University Administrators.
INSTITUTION	American Association of Univ. Administrators, Buffalo, N.Y.: ERIC Clearinghouse on Higher Education, Washington, D.C.
SPONS AGENCY	National Inst. of Education (DHEW), Washington, D.C.
PUB DATE	80
NOTE	7p.
AVAILABLE FROM	American Association of University Administrators, P.O. Box 536, Oneonta, NY 13820 ($0.50)
JOURNAL CIT	Administrator's Update: v2 n1 Sum 1980
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Accessibility (for Disabled): Administrator Responsibility: *Compliance (Legal): *Confidential Records: *Consumer Protection: *Disabilities: *Federal Regulation: Government School Relationship: *Higher Education: Social Discrimination: Student Records: Student Rights
IDENTIFIERS	Family Educational Rights and Privacy Act 1974: Rehabilitation Act 1973

ABSTRACT

The number of pages in the Federal Register devoted to regulations affecting higher education increased 1,000 percent from 1965 to 1977. It is suggested that it is beneficial for all campus administrators to be aware of the central issues involved in federal regulations. A synopsis of the regulations with which administrators most frequently come in contact is presented. These include: the Family Educational Rights and Privacy Act of 1974, concerning access to student records: Section 504 of the Rehabilitation Act of 1979, covering nondiscrimination on the basis of handicap: and student consumer information regulations. In each case, the principle, application, and scope of the regulations are examined and discussed briefly. A bibliography is appended. (MSE)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED190011

ADMINISTRATOR'S UPDATE

Volume 2, Number 1 SUMMER, 1980

American Association of University Administrators

ERIC Clearinghouse on Higher Education

FEDERAL REGULATIONS AND HIGHER EDUCATION: AN OVERVIEW FOR COLLEGE AND UNIVERSITY ADMINISTRATORS

By Dr. Ronald H. Stein and Judy Zuckerman

Introduction

In recent years, the federal government has assumed a dominant role in higher education. The extent of this federal involvement can be shown by the fact that the number of pages in the Federal Register devoted to regulations affecting higher education increased 1000 percent from 1965 to 1977 ("The Entagling Web. . ." 1979, p. 3). As Harold Enarson, president of Ohio State University, has remarked, "(T)he federal presence is felt everywhere in higher education, and federal laws and regulations are changing the academic world in ways that justify our alarm" ("The Entagling Web. . ." 1979, p 3).

It is hypothesized that increased federal control of higher education is due partly to the diminishing of society's faith in the self-regulation of education. This, in turn, has resulted in public cries for accountability and increased governmental intervention into the affairs of the academy. Compliance with federal regulations is costly to colleges and universities not only in terms of financial burdens, but, perhaps more importantly, in terms of erosion of institutional autonomy and academic freedom.

Federal regulations affect all aspects of academe -- from guidelines for physical plant construction, to hiring/firing of personnel, to decisions regarding curriculum. Therefore, college and university administrators must be knowledgeable about those regulations that impact on their professional roles.

We have selected for synopsis these regulations because they are the ones that higher education administrators most frequently come in contact with in the course of their professional responsibilities. The format of this presentation has been chosen in an effort to provide administrators with a desk-top reference to enable them to have sufficient information to judge whether or not the matter should be pursued with the campus expert on the particular regulation. In addition, it is our hope that this paper will serve to familiarize campus administrators with the federal regulations that are most pervasive at the college or university level. A bibliography is included for those who wish to explore the subject matter in greater detail.

It is not our intent to offer a definitive statement regarding federal regulations. Time nor space would permit such a presentation, which, at best, would be of limited value to a select audience. Moreover, it is only rarely that an administrator encounters a regulation outside his or her sphere of professional expertise or job responsibilities. Most institutions have designated individuals, such as Affirmative Action officers, to deal directly with these regulations. However, it is beneficial for all campus administrators to be sensitized to the central issues involved in federal regulations.

This article is an attempt to familiarize administrators with regulations pertinent to their administrative functions by providing them with a capsule view of the following federal regulations: (1) Section 504 of the Rehabilitation Act of 1973; (2) Family Educational Rights and Privacy Act of 1974; and (3) Student Consumer Information Regulations.

A future issue of **Administrators Update** will be devoted to: (1) Title VI of the Educational Amendments of 1972; (2) Title IX of the Educational Amendments of 1972; (3) Protection of Human Subjects: and (4) the Occupational Safety and Health Act of 1970.

Dr. Ronald H. Stein is Assistant to the President and Ms. Judy Zukerman is a Graduate Intern at the State University of New York at Buffalo.

NOTES

The number of pages in the Federal Register devoted to regulations affecting higher education increased 1000% percent from 1965 to 1977.

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

It is beneficial for all campus administrators to be sensitized to the central issues involved in federal regulations.

HE 012 971

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

Students and parents need protection against unwarranted access to this information by others.

Principle

Students and parents do not need to be protected from information about themselves, but do need protection against unwarranted access to this information by others.

Application

It applies to all educational agencies or institutions receiving federal funds for any federal programs under the administrative responsibility of the U.S. Commissioner of Education. It also applies to the institution if any of its students receive money from any federal educational grant program or guaranteed student loan program.

The regulations pertain to all students presently in attendance or those who have attended the institution. It does not apply to unsuccessful applicants to the institution.

Scope

A student (the law does not give rights to parents of students attending an institution of post-secondary education, except where the parent claims the student as a dependent under the Internal Revenue Service Act) has a right to review and inspect the educational records of the institution he is attending or has attended. This right of access does not include letters of recommendation written prior to January 1, 1975, letters of recommendation to which the student has waived access, and financial records. Records maintained by a school physician, psychiatrist, psychologist, etc., may only be reviewed by other professionals of the student's choice.

A student has a right to challenge the correctness of the record and a right to a hearing if this challenge is denied.

A student has a right to challenge the correctness of the record and a right to a hearing if this challenge is denied. The regulations require prior written consent from the student or a lawful subpoena before personally identifiable information can be released to parties other than the student, parent, other school officials, or organization conducting studies on behalf of educational agencies or institutions, and accrediting agents.

Most requests for student information concern "'directory information," or public information. Although the regulation does not stipulate exactly what is included in "directory information," some suggested categories are:

1. Name, address, telephone number, dates of attendance, class;
2. Previous institutions attended, major field of study, awards, honors, degrees; and
3. Past and present participation in officially recognized sports and athletics, physical factors, date and place of birth.

If an institution wishes to release directory information it must, on an annual basis, (1) give public notice of its intent to do so and (2) include in the public notice the categories of information wished to be released. The student (or eligible parent) has an opportunity to object to the release of any or all of the information. There is a fixed period of time by which the parent or eligible student must notify the institution in writing of the objection.

If an institution is found guilty of noncompliance, the Secretary of HEW may deny the offending institution any funds under any of the federal programs under the administrative responsibility of the U.S. Commissioner of Education.

SECTION 504 OF THE REHABILITATION ACT OF 1973

NON-DISCRIMINATION ON BASIS OF HANDICAP

"No otherwise qualified handicapped individual shall, solely by reason of his handicap, be denied the benefits under any program or activity receiving federal financial assistance."

Principle

These regulations implement section 504 of the Rehabilitation Act of 1973, that provides that "no otherwise qualified handicapped individual in the United States, as defined in Section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." Section 504 establishes a mandate to end discrimination, and is directed toward bringing persons with handicaps into the mainstream of American Society.

Application

The regulations apply to any institution that receives, or benefits from, federal assistance. As per the Rehabilitation Act Amendments of 1974, a handicapped individual is defined as a person who "(a) has a physical or mental impairment which substantially limits one or more of such person's life activities; (b) has a record of such an impairment; or (c) is regarded as having such an impairment."

Scope

With respect to employment practices, the regulation bars discrimination in recruitment, hiring, compensation, job assignment and classification, and fringe benefits. Employers are required to make reasonable accommodations to qualified handicapped applicants or employees unless it can be shown that this accommodation would result in an undue hardship on the employer.

In reference to postsecondary education, the regulation prohibits discrimination against handicapped persons in recruitment, admission, and treatment after admission. Institutions must make reasonable adjustments to allow handicapped individuals to fulfill academic requirements. Also, colleges and universitities must ensure that handicapped students are not excluded from programs due to the lack of auxiliary aids. Consortia exclusively for handicapped students may not be established by groups of colleges.

The central thrust of the regulation concerns accessibility of programs and facilities. At this time, programs of a recipient educational institution must be accessible to the handicapped, even though physical barriers may still exist. However, all structural modifications must be made by June 3, 1980.

Programs must be accessible to the handicapped, even though physical barriers may still exist.

The Office of Civil Rights is responsible for ensuring compliance. An institution must designate at least one employee as coordinator of compliance. The recipient institution is required to maintain compliance reports that must be submitted to HEW upon request. Compliance reviews may be conducted by the Department periodically. The sanction for failure to comply with the regulation is the suspension or termination of federal financial assistance, which may be imposed only following an express finding of noncompliance. Any action to withdraw federal funds is limited to the particular program in which noncompliance is found.

Additional Comments

Questions may arise pertaining to the definition of a "qualified handicapped person." For example, the regulations do not apply to prison record, age, or homosexuality. Drug addiction and alcoholism are considered handicaps if the impairment substantially limits one of the individual's "major life activities."

In regard to accessibility of facilities, structural modifications of existing facilities are only required in cases in which there are no other means of making a program accessible. All classrooms need not be barrier-free, but a sufficient number of sections of a course must be accessible to a handicapped student. It is the responsibility of the handicapped student to determine if a particular classroom or course is inaccessible. No distrimination exists until an institution is informed of the lack of accessibility.

No discrimination exists until an institution is informed of the lack of accessibility.

Section 503 of the Rehabilitation Act of 1973 sets forth affirmative action requirements for the hiring and advancement of handicapped workers by government contractors and subcontractors. Specifically, it applies to anyone who holds a government contract or subcontract in excess of $2,500. There are, of course, certain waivers and exclusions. Using the same definition of handicapped, as found above in Section 504, Section 503 requires that a contractor shall not discriminate against an employee or applicant because of such a handicap. In addition, the contractor must agree to "take affirmative action to employ and advance in employment qualified handicapped individuals at all levels of employment, including the executive level. Such action shall apply to all employment practices, including, but not limited to, the following: hiring, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships " (Section 60-741.6[a]).

In addition, the law provides that within 120 days from the awarding of a contract, the contractor or subcontractor who has contracts in access of $50,000 or having more than 50 employees must prepare an affirmative action program that must be reviewed and updated annually. It is important

to note that it is the employee's, or portential employee's obligation to identify him/or herself as a handicapped individual.

Comments of alleged discrimination may be filed by the employee or potential employee with the Department of Labor or other designated agency. If it is found that there is noncompliance, first an attempt to informally obtain compliance will be attempted. If this is unsuccessful, a formal hearing will be scheduled. Following a formal hearing, if it is found that the contractor has violated the intent of this section, the contractor's name may be added to the list of prime contractors and subcontractors who are ineligible to receive any further government contracts.

In June 1979, the Supreme Court heard its first case challenging rights provided under Section 504. The case -- Southeastern Community College *v* Davis -- arose when a student suffering from a severe hearing impairment sought admission to the school's program in nursing. Her application for admission was rejected on the grounds that the school felt that her handicap deterred her from safely performing responsibilities outlined in the clinical aspect of the nursing program, nor could she safeguard the safety of her patients. The Supreme Court, in its decision, agreed with the college. It concluded that the student, an otherwise qualified handicapped individual was, because of her handicap, prohibited from meeting the minimum "academic and teachnical qualifications" of the nursing program. It noted that: "Nothing in the language or history of Section 504 reflects an intention to limit the freedom of an educational institution to require reasonable physical qualifications for admission to a clinical training program" (Southeastern Community College *v*. Davis #78-711, p. 15).

STUDENT CONSUMER INFORMATION REGULATIONS

Principle

Students are consumers of higher education and, as such, can only make informed choices if they have access to the necessary information.

Application

The regulations apply to any institution of higher education that receives administrative cost allowances under the Basic Grant Program, Guaranteed Student Loan Program, Supplemental Education Opportunity Grant, College Work-Study, or National Direct Student Loan Program, and the payments received by an area vocational school because of participating in the College Work-Study Program.

Scope

The regulations apply to every currently enrolled or prospective student; however, the only information that needs to be provided is that information requested by the student. Naturally, this information must be available to comply with requests.

The regulations apply to every currently enrolled or prospective student.

The types of information that the institution is obligated to provide to students and prospective students on request includes:

(1) A description of all financial aid programs available to the students, including the institution's own financial aid programs. This description should include a statement of rights and obligations of students receiving this aid, criteria for continued eligibility, the terms under which the amount will be paid to the student, as well as the terms under which the student is obligated to repay the loan.

(2) The terms and conditions of the employment, if work study is part of the student's financial aid package.

(3) Cost of attending the institution, including tuition, fees, and all expenses, such as room, board, transportation, etc.

(4) The refund policy of the institution.

(5) A statement of the program of the institution, including "the current degree programs and other educational and training programs; the instructional, laboratory, and other physical facilities that relate to the academic program; and the faculty and other instructional personnel" (178.4 [e]).

(6) Information on the retention of sudents, including information on the data used to study retention.

(7) Information on the numbers and percentages of students who complete the program in which the student wishes to enroll or is currently enrolled.

(8) The titles of persons responsible for providing the above listed information, and where they can be contacted.

Except where enrollment otherwise justifies it, the institution is required to provide a full-time employee to assist students with the information provided above.

Annual Obligation

None.

Bibliography

To order documents in the bibliography identified by an ED number, write to ERIC Document Reproduction Service (EDRS), Computer Microfilm International Corporation, P.O. Box 190, Arlington, VA 22210. Documents with HE numbers are presently being processed by EDRS and will be assigned ED numbers upon publication in Research in Education (RIE). In ordering, ED numbers must be specified. MF indicates microfiche and HC denotes hard copy; payment must accompany orders of less than $10.00; and all orders must be in writing.

BIBLIOGRAPHY

Ardi, Dana and Palmer, Glenda. "Access to Higher Education: Mainstreaming on the Campus." Paper presented at the Annual International Convention, Council for Exceptional Children, Dallas, Texas, April 1979. ED 171 031.

Bailey, Cornelia. "The Federal 504 Handicapped Access Regulations: A Case Study in Government-Higher Education Relations." Research prepared in collaboration with the Sloan Commission on Government and Higher Education, 1979. ED 172 702.

Comment, "Consumer Protection and Higher Education-Student Suits Against Schools." Ohio State Law Journal 37 (1976): 608.

Department of Health, Education, and Welfare. Your Responsibilities to Disabled Persons as a School or College Administrator. Washington, D.C.: Department of Health, Education, and Welfare, 1978. ED 166 892.

"The Entangling Web: Federal Regulation of Colleges and Universities." Washington, D.C.: Editorial Projects for Education, 1979.

Flygare, Thomas J. "Twenty-Five States Ask the Supreme Court to Decide Issues Involving Handicapped Students." Phi Delta Kappan 60 (1979): 456-457.

Ledbetter, Beverly E., and Murphy, Maureen. "Federal Legislation and Its Effect Upon University Information Systems." Cause/Effect 1 (1978): 8-11.

Maas, Michael L. Procedures For the Implementation of the Family Educational Rights and Privacy Act of 1974. Long Beach, Cal.: Long Beach City College, 1975. ED 119 780.

Mackey, James A. "An Administrators' Guide to the Buckley Amendment." Paper presented at the Annual Meeting of the National Conference of Professors of Educational Administration. Baton Rouge, La.: Louisana State University, 1977. ED 144 198.

Tindall, Lloyd. W. "Education for All Handicapped Persons: A Mandate for the New Year." American Vocational Journal 53 (1978): 26-29.

Administrator's Update is prepared by the ERIC Clearinghouse on Higher Education, The George Washington University, D.C. Series Editor is Glenn M. Nelson, Associate Professor of Higher Education at the University of Pittsburgh. The material in this publication was prepared pursuant to a contract with the National Institute of Education, U.S. Department of Health, Education and Welfare. Contractors undertaking such projects under government sponsorship are encouraged to express freely their judgment in professional and technical matters. Prior to publication, the manuscript was submitted to the American Association of University Administrators for critical review and determination of professional competence. This publication has met such standards. Points of view or opinion, however, do not necessarily represent the official view or opinions of either the AAUA or the National Institute of Education.

Copies of Administrator's Update may be ordered for 50¢ each from the American Association of University Administrators, P.O. Box 536, Oneonta, N.Y., 13820. Payment must accompany all orders under $15.

ADMINISTRATORS UPDATE
INSTITUTE FOR HIGHER EDUCATION
UNIVERSITY OF PITTSBURGH
PITTSBURGH, PA. 15260

Non-Profit Organ.
U.S. POSTAGE
PAID
Pittsburgh, PA
Permit No. 511